

(b) Where contract rates of delivery vary by season, the formula shall be used on a seasonal basis to determine the extended power resource. A similar pro rata approach shall be used for energy extensions.

(c) Determination of the amount of resource available after existing contracts expire, if significantly different from existing resource commitments, shall take place only after an appropriate public process.

(d) The formula set forth in paragraph (a) of this section also should be used to determine the amounts of firm power subject to withdrawal at 5-year intervals after the effective date of the extension to existing customers, except that the percentage used would be up to 1 percent for each of the two withdrawal opportunities, and the formula would use the customer CROD, project CROD and the resource under contract at the time.

**§ 905.34 Adjustment provisions.**

Western reserves the right to adjust marketable resources committed to all customers with long-term firm power contracts only as required to respond to changes in hydrology and river operations, except as otherwise expressly provided in these regulations. Under contracts that extend resources under this PMI, existing customers shall be given at least 5 years' notice before adjustments are made. New customers may receive less notice. The earliest that any notice under this section shall become effective is the date that existing contractual commitments expire. Any adjustment shall only take place after an appropriate public process. Withdrawals to serve project use and other purposes provided for by contract shall continue to take place based on existing contract/marketing criteria principles.

**§ 905.35 New customer eligibility.**

(a) Allocations to new customers from the project-specific resource pools established under § 905.32 shall be determined through separate public processes in each project's marketing area. New customers receiving an allocation must execute a long-term firm power contract to receive the allocated power and are required to comply with the

IRP requirements in this part. Contracts with new customers shall expire on the same date as firm power contracts with all other customers of a project.

(b) To be eligible for an allocation, a potential new customer must be a preference entity, as defined in Reclamation law, within the currently established marketing area for a project.

(c) Entities that desire to purchase power from Western for resale to consumers, including municipalities, co-operatives, public utility districts and public power districts, must have utility status. Native American tribes are not subject to this requirement. Utility status means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail consumers. To be eligible to apply for power available from a project's initial resource pool, those entities that desire to purchase Western power for resale to consumers must have attained utility status by December 31, 1996, for the Pick-Sloan Missouri Basin Program—Eastern Division, and by September 30, 2000, for the Loveland Area Projects. To be eligible to apply for power from subsequent resource pool increments, these entities must have attained utility status no later than 3 years prior to availability of the incremental addition to the resource pool. Deadlines for attaining utility status for other projects will be established at a later date.

**§ 905.36 Marketing criteria.**

Western shall retain applicable provisions of existing marketing criteria for projects where resource commitments are extended beyond the current expiration date of long-term firm power sales contracts. Western must retain important marketing plan provisions such as classes of service, marketing area, and points of delivery, to the extent that these provisions are consistent with the PMI. The PMI, eligibility and allocation criteria for potential new customers, retained or amended provisions of existing marketing criteria, the project-specific resource definition, and the size of a project-specific